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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,207	01/15/2004	Ty W. Phipps	29379.00	4873
22465	7590	01/11/2005	EXAMINER	
PITTS AND BRITTIAN P C P O BOX 51295 KNOXVILLE, TN 37950-1295			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/758,207

Applicant(s)

PHIPPS, TY W.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2, 4-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, line 16, the term "said" should be inserted before "planar mid-portions" since the term "planar mid-portions" was set forth previously in line 12.

In regard to claim 1, line 17, the term "each" should be inserted before "said opposed surface" since these surfaces were previously set forth in lines 12 and 15.

In regard to claim 2, the phrase "...such that said bait segment is adjacent and distal of said blade first and second end segments respectively thereby negating contact..." renders the claim vague and indefinite since rotation of the blade will change the relative orientation between the bait segment and the first and second segments. It should be rewritten as "...such that said bait segment is a sufficient distance apart from said blade such that said bait segment is adjacent and distal of said blade first and second end segments during rotation of said blade thereby negating contact..." in order to convey the fact that the bait segment is close to the first and second segments during blade rotation yet far enough away so as not to contact the segments during blade rotation. Also see claim 4, lines 2-4 and claim 13, lines 10-12 for the same problem.

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In regard to claim 7, lines 20 and 21, the phrase "by said wire segment connecting said primary and secondary wire legs" renders the claim vague and indefinite since the "wire segment" was not previously set forth (It is claimed in line 2, of claim 8).

In regard to claim 8, lines 7 and 8, the term "an axis of rotation of said blade" renders the claim vague and indefinite since in claim 7, lines 10 and 11, the term "said blade having an axis of rotation..." was previously set forth.

In regard to claim 13, lines 11 and 12, the terms "said blade first and second angled segments" lacks positive antecedent basis since these terms were set forth in lines 19 and 20 of claim 13.

In regard to claim 15, lines 10-15, the phrase "...first half... second half... with paired holes... said first clapper... extend from a pair of closely spaced holes... said second clapper... a pair of closely spaced holes..." renders the claim vague and indefinite since it is unclear if the "paired holes" are the same as the holes from which the first and second clappers extend.

In regard to claim 17, lines 2 and 3, the term "said head portion distal end" should be changed to "said head portion trailing end" since this term was set forth in claim 13, line 15.

***Claim Objections***

3. Claims 9-12, 16-18 are objected to because of the following informalities:

Claim 9, line 2, "of" should be replaced with --to--.

Claim 9, line 4, "of" should be replaced with --to--.

Claim 16, line 5, "lesser" should be replaced with --less--.

Appropriate correction is required.

***Allowable Subject Matter***

4. Claim 3 is allowed.

5. Claims 1, 2, 4-18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

6. The following is a statement of reasons for the indication of allowable subject matter:

In regard to claim 1, the prior art of record does not disclose a fishing lure comprising a secondary wire leg having a length disposed parallel to the primary wire leg, the blade having an axis of rotation aligned with the length of the secondary wire leg, first and second end segments angled in opposed directions on opposed sides of the axis of rotation, and a clapper pivotably attached on each one of the opposed surfaces having the planar mid-portions of the blade.

In regard to claim 3, the prior art of record does not disclose a fishing lure comprising at least two clappers pivotably attached in diametrically opposed positions

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on the opposed surfaces of the blade, each clapper pivots independently on the opposed surfaces during rotation of the blade.

In regard to claim 7, the prior art of record does not disclose a fishing lure comprising the bait segment having an asymmetric arcuately shaped body extending to a trailing end, the blade having an axis of rotation aligned with the secondary wire leg and which includes opposed blade surfaces extending to a trailing end having first and second angled segments curved in opposed directions from the blade surfaces and extending from opposed sides of the blade axis of rotation, and a sound generator pivotably attached on at least one of the opposed surfaces of the blade.

In regard to claim 13, the prior art of record does not disclose a fishing lure comprising the bait segment including an enlarged mid-portion to form an asymmetrically shaped oval-cross section and the blade including at least two sound generators pivotably disposed on diametrically opposed planar half-portion surfaces of the blade.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA